

**APR 19 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ROBERT DALE MORR,

Petitioner - Appellant,

v.

TERRY L. STEWART, Director;  
ARIZONA ATTORNEY GENERAL,

Respondents - Appellees.

No. 04-16755

D.C. No. CV-02-01809-DGC/BPV

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
David G. Campbell, District Judge, Presiding

Submitted April 6, 2006\*\*  
San Francisco, California

Before: SCHROEDER, Chief Judge, TROTT and KLEINFELD, Circuit Judges.

Petitioner, Robert Dale Morr, appeals the district court's order denying as untimely his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Morr correctly concedes that he is not entitled to statutory tolling because his second state habeas petition was not filed timely. See Pace v. DiGuglielmo, 125 S.Ct. 1807, 1814 (2005). We need not determine whether Morr is entitled to equitable tolling because, even if we were to equitably toll the period that his Rule 32 motion was pending before the state court, his habeas petition remains untimely by at least sixteen days. Contrary to Morr's assertion, the alleged extraordinary circumstance was removed once the state court ruled on the Rule 32 motion.

**AFFIRMED.**